

IP 04-1720-C t/k Hunt Construction v Allianz Bi [2]  
Judge John D. Tinder

Signed on 08/07/07

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

HUNT CONSTRUCTION GROUP, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	1:04-cv-1720-JDT-TAB
	)	
	)	
ALLIANZ GLOBAL RISKS U.S.	)	
INSURANCE COMPANY,	)	
	)	
Defendant.	)	

**ENTRY ON PLAINTIFF'S OBJECTION TO DEFENDANT'S BILL OF COSTS (Doc.  
No. 101)<sup>1</sup>**

On November 27, 2006, the court entered summary judgment in favor of Defendant Allianz Global Risks U.S. Insurance Company ("Allianz") and against Plaintiff Hunt Construction Group, Inc. ("Hunt"). The diversity suit involved Hunt's builder's risk policy with Allianz for an airport terminal outside of Detroit, Michigan. The facts surrounding the suit are detailed in the court's Entry on Defendant's Motion for Summary Judgment. (Doc. No. 97.) Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, Allianz submitted a Bill of Costs on December 8, 2006, for \$59,402.64. (Doc. No. 99.) This included \$15,464.39 for court reporter fees for depositions and

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<sup>1</sup> This Entry is a matter of public record and will be made available on the court's web site. However, the discussion contained herein is not sufficiently novel to justify commercial publication.

\$43,938.25 for copies.<sup>2</sup> Hunt objected to this Bill of Costs on December 15, 2006.

(Doc. No. 101.) The court stayed taxation on the Bill of Costs pending determination of the appeal on December 20, 2006. (Doc. No. 105.) Although the appeal is still pending, the court will rule now on what the amount of the taxation will be.

Rule 54(d)(1) of the Federal Rules of Civil Procedure provides in relevant part: “Except when express provision therefor is made either in a statute of the United States or in these rules, costs other than attorneys’ fees shall be allowed as of course to the prevailing party unless the court otherwise directs . . . .” The prevailing party in this case is Allianz because the court granted summary judgment for it on all counts. *Weeks v. Samsung Heavy Indus. Co.*, 126 F.3d 926, 944 (7th Cir. 1997) (citing *Hudson v. Nabisco Brands, Inc.*, 758 F.2d 1237, 1242 (7th Cir. 1989)).

As the prevailing party, Allianz is generally entitled to its costs. *Id.* at 945. But costs does not have the customary meaning of expenses, instead it has a technical definition. Section 1920 of title 28 of the United States Code defines costs for the purposes of Rule 54(d). *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441 (1987). However, the courts may interpret the meaning of the language of § 1920. *SK*

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<sup>2</sup> The court has been unable to duplicate Allianz’s math. Adding together all of the invoices for copying the costs equals \$43,938.25 (the same as Allianz’s claimed cost); however, adding all the invoices for depositions equals \$15,654.50 (\$190.11 more than Allianz’s claimed costs). Further, Allianz has since admitted that some of its court reporter fees—for rough drafts, compact disks, and delivery fees—are not allowed and has reduced the amount requested for deposition costs to \$13,297.45. (Def.’s Br. 4-5 n.1.) Again, the court’s math is different. When taking these costs out, the court gets \$13,003.90. Rather than try to reconcile the two numbers, the court will rule on what costs are allowable and add together allowed costs to come up with its own figure.

*Hand Tool Corp. v. Dresser Indus., Inc.*, 852 F.2d 936, 944 (7th Cir. 1998). Section 1920 reads in relevant part:

A judge or clerk of any court of the United States may tax as costs the following:

. . .

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

. . .

(4) Fees for exemplification and copies of papers necessarily obtained for use in the case . . . .

28 U.S.C. § 1920.

In order for a court to award a particular cost, it must find two things. First, it must determine that the expense is allowable. *Northbrook Excess & Surplus Insur. Co. v. Proctor & Gamble Co.*, 924 F.2d 633, 642 (7th Cir. 1991) (citing *Weihaupt v. Am. Med. Ass’n*, 874 F.2d 419, 430 (7th Cir. 1989)). Next, it must determine that the amounts are reasonable and necessary. *Majeske v. City of Chicago*, 218 F.3d 816, 824 (7th Cir. 2000). A district court has “wide discretion in determining and awarding reasonable costs.” *Northbrook*, 924 F.2d at 642. The Seventh Circuit will “review carefully whether an expense is recoverable” but after that will “defer to the district court, which is in the best position to determine whether the cost is reasonable.” *Id.* (citing *SK Hand Tool*, 852 F.2d at 943). Also, according to 28 U.S.C. § 1924, before the

losing party is taxed, the prevailing party must attach an affidavit attesting that the costs are correct and were necessarily incurred.<sup>3</sup>

Hunt's objection consisted of three main points: first, Allianz had not submitted an affidavit attesting that each item is correct and necessarily incurred in the case as required by 28 U.S.C. § 1924; second, many of Allianz's requested costs are "unreasonable and unjustified"; and third, the taxation should be stayed pending Hunt's appeal of summary judgment. Section 1924 only requires that a bill of costs be verified, *Illinois v. Sangamo Const. Co.*, 657 F.2d 855, 867 n.16 (7th Cir. 1981), which Allianz has done. Taxation has been stayed by this court pending appeal. Therefore, the first and third parts of Hunt's objection need not be further addressed.

Within this second point, Hunt objects to five types of costs: (1) copying and Bates labeling costs because there was no information given on what was copied and why they were labeled; (2) video deposition costs because they are not allowed costs; (3) "realtime" transcript costs because there was no explanation of why they were necessary; (4) any invoice for deposition transcripts which lacked an account of the number of pages, included expedited services, or included a rough draft; (5) excessive transcript charges.

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<sup>3</sup> The text of 28 U.S.C. § 1924 reads:

Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto any affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.

In response to Hunt's brief, Allianz agreed that costs for rough drafts, compact disks, and delivery were not allowable and has dropped its request for them. Allianz has also resubmitted invoices for all depositions to include the number of pages. Therefore, the court will address each of Hunt's objections in turn, except (3), which, as a rough draft, Allianz has agreed to withdraw. The court will address (4) and (5) together because after Allianz's response, all of that remains of them is an objection to excessive charges and expedited services.

### *Copying Costs*

The single largest cost from any vendor was from Ikon for copying costs amounting to \$43,110.52. The invoices indicate only that regular copies were \$0.15 and that roughly a quarter of a million pages were duplicated. In its brief, Allianz additionally stated that Hunt itself chose this vendor and that these were copies from the original project file "selected by Allianz Global Risks' [sic] from the more than 350 boxes kept at the Hunt warehouse." (Def.'s Br. 6.) Allianz claims that "no additional detail is required." (*Id.*)

But it is Allianz's burden to demonstrate that the photocopies were necessarily obtained for use in the case. *Tirapelli v. Advanced Equities, Inc.*, 222 F. Supp. 2d 1081, 1086 (N.D. Ill. 2002). The prevailing party must provide documentation that allows the court to determine that the charges were necessary. *Nilssen v. Osram Sylvania*, No. 01 C 3585, 2007 WL 257711, at \*6 (N.D. Ill. Jan. 23, 2007). Allianz need not provide a breakdown "so detailed as to make it impossible economically to recover photocopying

costs.” *Northbrook*, 924 F.2d at 643. But it does have to provide the best breakdown it can. *Id.*

Allianz did not provide any information as to what documents were copied or how many copies were made. It is impossible for the court to determine whether the copies were necessarily obtained. Allianz argues that all quarter million pages came from Hunt’s warehouse and, thus, Hunt well knows what they were and that they were necessary. But the court, who must make the determination to award costs, does not.

Why it is so important that Allianz substantiate its claim for copying costs is evidenced by Allianz’s reduction of its claim for deposition costs in its response, as Hunt points out in its reply. When forced to breakdown its deposition costs, Allianz’s admitted that several of its costs were not taxable. Allianz must be forced to provide more than a vague assertion on the number of pages copied and how much each copy costs. How is the court to know that these copies were even tangentially related to this case? How is the court to know how many copies were made? The court must disallow all of the copying costs.

These same concerns apply to Allianz’s request for award of costs for the Bates labeling. There is no explanation for what documents were chosen for Bates labeling. Was it really necessary and reasonable for Bates labeling to be used on the documents Allianz chose? It is impossible to tell from the documents submitted. Therefore all of these costs will be denied as well.

### *Videographer*

Hunt also objects to the duplicative cost of providing both a videographer and a reporter at certain depositions. It argues first that a videographer is not an allowed expense under § 1920. However, this argument is without merit. The Seventh Circuit has noted:

[V]ideotaped depositions are a necessary and time effective method of preserving witnesses' time and allocating precious court and judicial time in this age of advanced court technology and over-crowded court calendars. [Thus, w]e must not seem reluctant to adopt any and all time-saving methods that serve to improve our system of justice.

*Commercial Credit Equip. Corp.*, 920 F.2d 1361, 1368 (7th Cir. 1990), *superseded by rule*, Fed. R. Civ. P. 30(b)(2), *as recognized in Roberts v. Owens-Corning Fiberglass Corp.*, 101 F. Supp. 2d 1076, 1086 (S.D. Ind. 1999) (McKinney, J.). Courts have even allowed recovery of the costs for both a transcript and a video as long as both were necessarily obtained for use in the case. *Roberts*, 101 F. Supp. 2d at 1086 (compiling cases).

More importantly, from the invoices it does not seem that Allianz is asking for taxation for any of the videographers' time or for a copy of the video. The three videotaped depositions were for Vincent Vaulman, Len Wentworth, and Wallace Petrowski. These were all performed by the company TSG Reporting. There are also TSG invoices for the depositions of Bart Pajor and Steven Kennedy, which did not involve a videographer. Comparing these invoices demonstrates that the costs Allianz's requests are identical for the video and non-video depositions. There is no indication



that Allianz ordered a video or paid for the videographers' services. For some reason, Allianz does not argue this point but instead argues that it was Hunt that noticed these depositions as video depositions. It claims that it, thus, had a right to "obtain the benefit of the tape." This may be, but it does not appear to have done so anyway.

### *Expedited Transcripts and Excessive Transcript Costs*

Hunt's final argument is that Allianz should not be allowed to recover costs for expedited transcripts because no reason for their necessity was given; further, Hunt argues that the rate Allianz was charged for many of the depositions was excessive. Hunt argues that the court should limit Allianz to collecting an amount per page equal to that allowed by the Judicial Conference of the United States in their Court Reporter's Manual for what court reporters may charge parties for transcripts. See 6 Guide to Judiciary Policies and Procedures § 20.3 (Court Reporters' Manual) (Jan. 1998). The rate currently given by the Judicial Conference for a regular transcript is \$3.30 per page and for an expedited transcript is \$4.40 per page.<sup>4</sup> *Id.* Many of the depositions charged amounts per page greatly exceeding these rates by several dollars.

Allianz has provided no reason why it expedited some of the depositions. In fact, it did not even address the argument in its brief. With no indication for why it paid extra for these depositions, the court cannot allow those costs. The court will reduce the per page rate to a reasonable rate for a non-expedited transcript.

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<sup>4</sup> In its brief, Hunt claims this amount should be \$3.00 per page for regular transcripts, but that is an old amount that was used when *Cengr v. Fusibond Piping Systems, Inc.*, 135 F.3d 445, 456 (7th Cir. 1998), was issued.

Hunt cites *Cengr v. Fusibond Piping Systems, Inc.*, 135 F.3d 445, 456 (7th Cir. 1998), to claim that Allianz should be limited to transcript costs set by the Judicial Conference. Although the holding of *Cengr* is inapplicable to this case (it was construing a local rule of the Northern District of Illinois), the court finds that the \$3.30 per page rate is a reasonable one. Five of the fourteen depositions transcripts were provided for under \$3.00 a page. The rest were either expedited or way out of line (the rates for non-expedited transcripts varied from \$4.88 to \$5.77 per page). The court will therefore allow up to \$3.30 per page for the depositions.

Originally, Allianz submitted several invoices from Alexander Gallo & Associates without any breakdown of costs. It has since provided the cost with greater detail. This has led them to reduce the amount they were seeking because some of the costs were not taxable. For one deposition, the Holwig deposition, no breakdown was possible; however, Allianz was able to give a page count (167 pages). The court will limit taxation related to that deposition to \$551.10, or \$3.30 for 167 pages.

This brings the costs taxable to \$8857.10. No costs are allowed for copying costs. By deposition, the costs are: \$754.50 for the Hoyer deposition;<sup>5</sup> \$655.60 for

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<sup>5</sup> \$432.30 (131 pages x \$3.30) + \$180.00 (appearance fee) + \$67.20 (exhibits) + \$35.00 (ETV - exhibits) + \$40.00 (administrative fee) = \$754.50. The court removed the Min-U-Script fee and shipping.

Robeson;<sup>6</sup> \$400.90 for Wentworth/Petrowski;<sup>7</sup> \$1172.90 for Prewitt;<sup>8</sup> \$715.70 for Decker;<sup>9</sup> \$515.10 for Collavino;<sup>10</sup> \$551.10 for Holwig;<sup>11</sup> \$771.90 for Modrall;<sup>12</sup> \$395.30 for Dabb;<sup>13</sup> \$709.50 for Nagorzanski;<sup>14</sup> \$675.55 for Pajor;<sup>15</sup> \$695.05 for Vaulman;<sup>16</sup> \$206.50 for Kennedy;<sup>17</sup> and \$637.50 for Enloe.<sup>18</sup>

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<sup>6</sup> \$419.10 (127 pages x \$3.30) + \$150.00 (appearance fee) + \$69.00 (exhibit fee) + \$17.50 (read and sign fee) = \$655.60. The court removed the Multimedia CD, rough disk, shipping/handling and condense transcript.

<sup>7</sup> \$383.50 (130 pages x \$2.95) + \$17.40 (exhibits) = \$400.90. The court removed the Compressed/ASCII/Word Index and shipping and handling.

<sup>8</sup> \$887.70 (269 pages x \$3.30) + \$200.00 (appearance fee) + \$67.70 (exhibit fee) + \$17.50 (read and sign fee) = \$1172.90. The court removed the Multimedia CD, rough disk, condense transcript, and shipping/handling.

<sup>9</sup> \$524.70 (159 pages x \$3.30) + \$150.00 (appearance fee) + \$23.50 (exhibit fee) + \$17.50 (read and sign fee) = \$715.70. The court removed the Multimedia CD, condense transcript, and shipping/handling.

<sup>10</sup> \$287.10 (87 pages x \$3.30) + \$75.00 (appearance fee) + \$153.00 (exhibit fee) = \$515.10. The court removed the Multimedia CD, rough disk, condense transcript, and shipping/handling.

<sup>11</sup> \$551.10 (167 pages x \$3.30). No breakdown of the costs was provided by Allianz; therefore, the court taxed the reasonable fee for the amount of pages.

<sup>12</sup> \$471.90 (143 pages x \$3.30) + \$160.00 (appearance fee) + \$122.50 (exhibit fee) + \$17.50 (read and sign fee) = \$771.90. The court removed the Multimedia CD, condense transcript, and shipping/handling.

<sup>13</sup> \$283.80 (86 pages x \$3.30) + \$75.00 (appearance fee) + \$19.00 (exhibit fee) + \$17.50 (read and sign fee) = \$395.30. The court removed the Multimedia CD, shipping/handling, and rough disk.

<sup>14</sup> \$709.50 (215 pages x \$3.30). The court removed shipping.

<sup>15</sup> \$463.15 (157 pages x \$2.95) + \$212.40 (exhibits) = \$675.55. The court removed rough ASCII, Compressed/ASCII/Word Index, and shipping and handling.

<sup>16</sup> \$622.45 (211 pages x \$2.95) + \$72.60 (exhibits) = \$695.05. The court removed Compressed/ASCII/Word Index and shipping and handling

<sup>17</sup> \$206.50 (70 pages x \$2.95). The court removed rough ASCII,

(continued...)

The Clerk is directed to tax costs accordingly, if the court's decision is affirmed on appeal.

ALL OF WHICH IS ENTERED this 7th day of August 2007.

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John Daniel Tinder, Judge  
United States District Court

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<sup>17</sup>(...continued)  
Compressed/ASCII/Word Index, and shipping and handling.

<sup>18</sup> \$602.50 (241 pages x \$2.50) + \$35.00 (exhibits) = \$637.50. The court removed realtime/ RD transcript, litigation support, and shipping and handling.

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